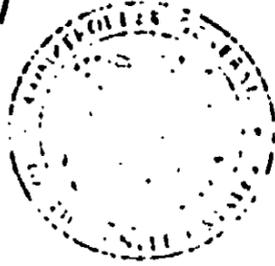


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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

21476

FILE: B-198473

DATE: April 12, 1982

MATTER OF: Joseph J. Zarba - Retroactive
Reclassification - Backpay Reconsideration

DIGEST: Employee, who was downgraded from a GS-13 to a GS-12 following reorganization and reclassification of a position, seeks retroactive reclassification of the position to GS-13 and backpay. The employee claims entitlement on the basis that reorganization of the position was an improper action which caused his downgrading and that he continued to perform the same duties he performed when the position was at a higher grade. The claim is denied because an employee is entitled only to the pay of the position to which appointed and allegations of improper position classification must be timely appealed to either the agency or OPM. 5 C.F.R. § 511.603 et seq.

Mr. Joseph J. Zarba has requested reconsideration of Comptroller General Decision B-198473, May 4, 1981, by which we affirmed our Claims Group's denial of his claim for retroactive reclassification of his position and backpay. Upon reconsideration, we affirm our decision for the reasons explained below.

Mr. Zarba's claim arose due to his downgrading on June 10, 1977, from a GS-13 to a GS-12. At that time, his position as Financial Manager GS-505-13 (Organizational title Comptroller) at the Rocky Mountain Arsenal, which had been directly under the Installation Commander, was placed under the supervision of the Director of Administration, a position occupied by an Industrial Engineer, GS-0896-13. Mr. Zarba's position was reclassified as Budget and Accounting Officer, GS-504-12.

On August 26, 1977, Mr. Zarba filed a complaint or grievance with the Inspector General serving his installation, contending that Army regulations and directives required a separate Comptroller's organization. On October 20, 1977, the Inspector General replied that "DARCOM"

had directed the establishment of a separate Comptroller's organization at the Rocky Mountain Arsenal and that the Comptroller position would be established at the GS-12 grade, Code 505. Mr. Zarba was officially reassigned to that position on December 10, 1978, 18 months after he had been downgraded.

Since there was evidence that Mr. Zarba had been detailed, our Claims Group treated Mr. Zarba's claim as falling within the purview of Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 27 (1977), where we held that employees detailed to a higher graded position for more than 120 days without prior Civil Service Commission (now OPM) approval, are entitled to temporary retroactive promotion and backpay. Our Claims Group denied Mr. Zarba's claim, however, because he was not detailed to an established position as required by CSC Bulletin No. 300-40, which implemented the Turner-Caldwell decisions.

Mr. Zarba appealed stating that a detail was not the basis of his claim. We considered Mr. Zarba's arguments and in our decision of May 4, 1981, denied his claim on the grounds that an employee is entitled only to the salary of the position to which he is appointed, regardless of the duties he performs. United States v. Testan, 424 U.S. 392 (1976). In addition, we pointed out that CSC/OPM regulations and decisions of our Office specifically prohibit retroactive classification actions except in the case of a timely, successful appeal of a downgrading or other classification action resulting in a reduction in pay.

In connection with his request for reconsideration, Mr. Zarba has raised two issues. He states that in accord with Army Regulation (AR) 5-2, the Comptroller organization was required and should never have disappeared. He contends that if his installation had not violated AR 5-2, his position would not have been reclassified and downgraded. The second point Mr. Zarba makes is that while the financial management of the installation was placed under the Director of Administration, he continued to perform the same duties he had performed before the downgrading of his position because the Director was an Industrial Engineer who had no expertise in the area.

Mr. Zarba appears to be asserting that he is entitled to retroactive promotion under the Back Pay Act, on the basis that the reorganization of the Comptroller organization was an unjustified or unwarranted personnel action which caused his downgrading. And resulting loss of pay.

The Back Pay Act, codified at 5 U.S.C. § 5596, is the statutory authority under which an agency may retroactively adjust an employee's compensation. Before retroactive payment may be made, however, there must be a determination not only that an employee has undergone an unjustified or unwarranted personnel action, but also that "but for" such action the withdrawal of pay would not have occurred. 54 Comp. Gen. 760, 763 (1975).

Assuming for the moment that the Back Pay Act applies to the present situation, we find several problems with Mr. Zarba's argument. First, it does not appear that AR 5-2 mandates a separate Comptroller organization. Paragraph 5, entitled "Comptroller Organization" provides that:

"The grouping of the above responsibilities and functions does not define or prescribe the organizational structure of individual comptroller offices. Experience has proven that functions covered by this regulation are best performed when consolidated in a single staff section."

Thus, AR 5-2 merely prescribes guidelines to be followed, and as stated in paragraph 1 of the regulation, it merely sets forth the role and functions of comptrollers of various Army commands.

Secondly, we are not convinced that the placement of the Comptroller organization under the Director of Administration was the direct or sole cause of Mr. Zarba's downgrading. When Mr. Zarba's position was reclassified from the Budget and Accounting Office series back to the Financial Manager series it remained at the GS-12 grade level. In fact, the letter from the Inspector General of October 20, 1977, relied on by Mr. Zarba in support of his argument, specifically states that the Comptroller's position was to be a GS-12, and that civilian personnel channels

would be the appropriate avenue to have the position evaluated for an appropriate grade determination.

In any event, we do not believe the Back Pay Act applies in this situation. Mr. Zarba has alleged that his position was incorrectly classified and it has been held that the Back Pay Act does not create a substantive right to backpay for a period of wrongful position classification. See United States v. Testan, previously cited.

According to the provisions of the Classification Act, 5 U.S.C. § 5101, et seq. the authority to establish appropriate classification standards and to allocate positions subject to the General Schedule rests with the agency concerned and OPM. This Office has no authority to settle claims on any basis other than the agency or OPM classification. William A. Campbell, B-183103, June 2, 1975. Thus, Mr. Zarba is entitled only to the salary of a GS-12 even though he may have performed the same duties he was performing as a GS-13. Mr. Zarba should have appealed the alleged improper classification to his agency or to OPM. See 5 C.F.R. § 511.603 et seq. (1981).

Our decision of May 4, 1981, is hereby affirmed.

William J. Douglas
for
Comptroller General
of the United States